

IC 5-15-2

Chapter 2. Reinstatement of Destroyed Records

IC 5-15-2-1

Judicial records; certified copies of lost or destroyed originals

Sec. 1. Whenever any record, bond, execution, order of sale or other writ, or the returns thereon, or any other paper or part thereof, in any judicial proceeding of any judicial court of this state, shall before or after March 9, 1881, be lost or destroyed, any party or person interested therein may, on application by complaint in writing and upon notice, as provided in section 3 of this chapter, in the court having jurisdiction over, or the custody or control thereof, and on showing to the satisfaction of such court, that the same has been lost or destroyed without fault or neglect of the party or person making such application, obtain an order from such court authorizing such defect to be supplied by a duly certified copy of the original, where the same can be obtained, which certified copy shall be entered of record in said court and shall thereafter have the same force and effect as the original would have had in all respects.

(Formerly: Acts 1881, c.30, s.1.) As amended by P.L.25-1986, SEC.82.

IC 5-15-2-2

Judicial records; loss or destruction of originals; certified copy unobtainable

Sec. 2. Whenever the loss or destruction of any such record, bond, execution, order of sale, or other writ, or the returns thereon, or any other paper or part thereof, shall before or after March 9, 1881, happen and such defect cannot be supplied as provided in section 1 of this chapter, any party or person interested therein may file his complaint in the court to which the same belonged or which has jurisdiction over or custody or control of the same, showing the loss or destruction thereof, and that a certified copy thereof cannot be obtained by the party or person making such application, and the substance of the same so lost or destroyed, and that such loss or destruction occurred without the fault or neglect of the party making such application, and that such loss or destruction, unless supplied, will or may result in damage to the person making such application; and thereupon the defendants named in such complaint shall be served with summons or notified by publication, as provided in section 3 of this chapter, and said cause shall stand for hearing by said court the same as other civil cases in said court.

(Formerly: Acts 1881, c.30, s.2.) As amended by P.L.25-1986, SEC.83.

IC 5-15-2-3

Notice of hearings

Sec. 3. The defendants, their legal representatives, or the necessary parties in all cases mentioned in the preceding sections, shall have ten (10) days' notice of the time set for the hearing thereof,

by summons issued by the clerk of such court; or if such defendants are nonresidents of the state of Indiana, or their residence be unknown, or the names of any necessary party defendants be unknown, such notice may be given by three (3) successive weeks' publication in some weekly newspaper of general circulation published in said county to be named by the person making the application, his agent or attorney; or if none be published in such county, then such notice shall be given by publication in the weekly newspaper published in this state nearest the county seat of such county, such published notice to be given by the clerk of such court on affidavit filed by plaintiff, his agent, attorney or some competent person; the last of which notices shall be published ten (10) days before the first day of the term of court in which said claim may be pending, or ten (10) days before a day in said term for which said cause may be set for hearing, which day shall be named in the summons or notice.

(Formerly: Acts 1881, c.30, s.3.)

IC 5-15-2-4

Resisting complaint; answer of nul-tiel record; admission of oral testimony; reinstatement

Sec. 4. Such defendants may resist such complaint by answer of nul-tiel record, and no other, as to the existence of the record, bond, execution, order of sale or other writ, or the returns thereon, or other paper sought to be reinstated; and upon the trial thereof, oral testimony shall be admitted, and strict proof of dates, sums and amounts, and actual entries and forms of record shall not be required on the trial of such issue; but the court shall, on such hearing, if the question is presented, determine, and in its record of reinstatement set forth, what satisfaction, in whole or in part, by payment or otherwise, has been made of any judgment or decree sought to be reinstated since the rendition thereof, and if, upon such hearing, such court shall be satisfied that the statements in such complaint are true, the court shall make an order reciting what was the substance and effect of such lost or destroyed record, bond, execution, order of sale or other writ, or the returns thereon, or other paper or part thereof, and what satisfaction, by payment or otherwise, in whole or in part, has been made of any judgment or decree so sought to be reinstated when that question is presented; which order shall be entered of record in said court and shall have the same force and effect that the original record would have had if the same had not been lost or destroyed, subject to any satisfaction found by the court.

(Formerly: Acts 1881, c.30, s.4.)

IC 5-15-2-5

Motion to set aside reinstatement

Sec. 5. In all cases where any record, bond, execution, order of sale or other writ, or the returns thereon, or any other paper, or part thereof mentioned in this chapter has been or may be lost or destroyed, in whole or in part, and has been reinstated without

appearance of or actual notice to the defendants in such proceeding of reinstatement, any such defendants may, at any time within two (2) years thereafter, unless he may be under disabilities, then within two (2) years after the removal of such disabilities, on affidavit of merits have the same set aside on motion in writing, of which motion the plaintiff or complainant shall have the same notice required to be given the defendants in section 3 of this chapter, and when such reinstatement shall be set aside the same proceedings shall be had thereon as if the defendant had appeared to the original complaint for reinstatement.

(Formerly: Acts 1881, c.30, s.5.) As amended by P.L.25-1986, SEC.84.

IC 5-15-2-6

Affidavit for reinstatement; stay of proceedings

Sec. 6. In all actions pending on March 9, 1881, or that may be commenced after March 9, 1881, in any court of record in this state, any party thereto may, on application to such court verified by affidavit, show that any record, bond, execution, order of sale, or other writ or the returns thereon, or any other paper of the record or files of any court in this state necessary to be used in evidence in such cause has been lost or destroyed, in whole or in part, without his fault or neglect, which affidavit shall show the competency and necessity of the same as evidence in the cause, and that the same has not been reinstated, and such court shall, unless the adverse party will admit on the trial the facts stated in such affidavit, stay all proceedings for a reasonable time, that said destroyed record, in whole or in part, may be reinstated, the court shall, upon cause shown, grant further and additional time for the reinstatement of such record; but the trial of such action shall not be delayed more than one (1) year for such reinstatement, and to expedite the reinstatement of the same the court may, on motion of either party, refer the question of such destruction and reinstatement, as shown in such affidavit, to a master commissioner to be appointed by the court to hear, examine, and take all the evidence and report fully all the facts in writing to the court, as provided for in this chapter.

(Formerly: Acts 1881, c.30, s.6.) As amended by P.L.25-1986, SEC.85.

IC 5-15-2-7

Reference of complaint to master commissioner; proceedings

Sec. 7. Whenever any complaint is filed in any court for the reinstatement of any record, bond, execution, order of sale or other writ, or the returns thereon, or any other paper or part thereof, as above provided, the court may, on its own motion, or upon application of either party, refer to a master commissioner for examination and hearing all the evidence, written and oral, in such case; and such master commissioner shall hear such evidence as in other cases, and shall make a full and complete report thereof to the court, and shall also report to the court, in form, such record, bond,

execution, order of sale or other writ, or the returns thereon, or any other paper or part thereof sought to be reinstated, and the court, if it finds the forms so reported to be substantially correct, as shown by the evidence reported, shall order the same reinstated accordingly; and when so entered of record by the court, it shall have the same force and effect as the original would have had if the same had not been lost or destroyed; or such court may, from the report of such master commissioner, find, determine and say what such original or part thereof was before its loss or destruction, and shall order the same reinstated; and when so reinstated, it shall have the same force and effect as the original would have had if the same had not been lost or destroyed. Which report of master commissioner, and the finding and judgment of the court thereon, shall be governed by the same practice as in other civil cases. Before such master commissioner shall proceed to hear and examine the evidence in any case referred to him, he shall give the parties thereto reasonable notice of the time and place of hearing the same. Said master commissioner shall have power to issue writs of subpoena, which writs and other notices shall be served by the sheriff, administer oaths, require the production of all writings, records, or parts of records, papers, memoranda or exhibits in any case referred to him; and he shall report to the court, for punishment for contempt, any person for failure to appear before him, on due and sufficient notice, to give testimony or to furnish any writing, record or part of record, paper, memorandum or exhibit that may be required in evidence in any case so referred. Such master commissioner shall be allowed by the court for his services, reasonable compensation, to be taxed and paid as the court may direct.

(Formerly: Acts 1881, c.30, s.7.)

IC 5-15-2-8

Title to real estate; quieting title by complaint

Sec. 8. Whenever any record of any court of this state, or any pleading or paper of the files of such court, any probated will or will filed for probate, or any execution or decretal order or other writ issued out of such court, or by the clerk thereof, has been lost or destroyed, in whole or in part, and such lost or destroyed record, paper, will, order or writ in any way forms a part of the evidence of any title to or interest in any real estate, either legal or equitable, any person holding such title to or interest in such real estate may, by complaint in the proper court of the county in which such real estate is situated, have his title to or interest in such real estate declared quieted and set at rest. All persons having or claiming any interest in such real estate shall be made defendants to such complaint and shall be served with notice as provided in section 3 of this chapter. The complaint shall specify the plaintiff's title to or interest in the real estate and shall state with reasonable certainty the record, paper, order, will or writ lost or destroyed and how the same constitutes a part of the evidence of his title to or interest in such real estate. Upon the trial of such cause, oral testimony shall be admitted of the loss or

destruction, and the contents of such records, papers, wills, orders, or writs so lost or destroyed; and such rule of evidence shall be applicable to every part of such records, papers, orders, wills, or writs, the issuing of such writs, and other process of such courts, and the returns thereon, notices by publication and the proof thereof.

(Formerly: Acts 1881, c.30, s.8.) As amended by P.L.25-1986, SEC.86.

IC 5-15-2-9

Probate records; reinstatement

Sec. 9. The judge of any court having probate jurisdiction, the records of which may before March 9, 1881, have been or may after March 9, 1881, be destroyed, in whole or in part, may proceed, upon his own motion or on complaint in writing by any interested party, to reinstate the records and proceedings of such court relating to decedents' estates, guardianships, records of wills, wills probated, and wills filed for probate in said court; and for the purpose of reinstating said records, wills, papers, or proceedings, or any part thereof, may, on his own motion or on written complaint filed by any interested party, issue citations and compel the attendance of all parties for that purpose; and may, in his discretion, refer such matter to a master commissioner, as provided for in section 7 of this chapter. All persons interested shall be notified as provided for in section 3 of this chapter, or in such manner and for such time as the court may direct, and oral testimony shall be admissible of the existence, contents, and destruction of such records, papers, and wills.

(Formerly: Acts 1881, c.30, s.9.) As amended by P.L.25-1986, SEC.87.

IC 5-15-2-10

Judicial records; special term to reinstate lost or destroyed records

Sec. 10. The judge of any court, the records or papers whereof have been or may be destroyed, in whole or in part, is hereby authorized to hold any special term or terms of said court, for such length of time and at such time or times as may to him, in his discretion seem proper for the purpose of reinstating records and papers of such court. And process may be made returnable at such special terms, and all proceedings had thereat in such cases, the same as at a regular term of said court.

(Formerly: Acts 1881, c.30, s.10.)